

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

Bail Appl..No. 6681 of 2007()

[CRIME NO.407/07 OF PERAMBRA POLICE STATION]

: PETITIONER/ACCUSED 1 & 2

1. IMAS, S/O.KESAVAN,
AGED 57 YEARS, VELUTHADAN KANDY,
NOCHAD VILLAGE, CHENOLI AMSOM, KOZHIKODE DISTRICT.
2. KAMALA, W/O.IMAS, VELUTHADANKANDY,
NOCHAD VILLAGE, CHENOLI AMSOM, KOZHIKODE
DISTRICT.

BY ADV. SRI.SANTHARAM.P

RESPONDENTS: COMPLAINANT AND STATE

1. DY.S.P., C.B.C.I.D., (ADMINISTRATION),
TRIVANDRUM.
2. STATE REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 05/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J.

B.A.No.6681 of 2007

Dated this the 5th day of November 2007

O R D E R

Application for anticipatory bail. The petitioners are accused 1 and 2 in a crime registered for offences punishable inter alia under Sections 306 I.P.C and 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The crux of the allegations is that the accused persons traded insult and abuses to the de facto complainant making specific reference to the scheduled caste community to which she belongs. This, allegedly compelled her to attempt to commit suicide.

2. The learned counsel for the petitioners submits that in any view of the matter, allegations under Section 306 I.P.C is not justifiable - the de facto complainant having admittedly not committed suicide. The learned counsel for the petitioners then submits that at any rate, the allegations under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act raised against the petitioner are not legally sufficient. Vague allegations are being raised against the petitioners, submits the learned counsel for the petitioner.

3. The learned Public Prosecutor opposes the application on the ground that in view of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, anticipatory bail cannot be granted to the petitioners. The learned Public Prosecutor fairly concedes that the allegation under Section 306 I.P.C will not lie. It is submitted that necessary report to that effect shall be filed before the learned Magistrate shortly. But it is submitted that no such report has so far been filed. Be that as it may, I am satisfied that this application for anticipatory bail is not legally sustainable in the light of Section 18 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. I shall carefully avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. The F.I.statement shows that allegations are raised under Section 3(1) (x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act also.

4. The petitioner, I am satisfied, must be directed to surrender before the learned Magistrate and seek regular bail. This court has, time and again, clarified that in a case where allegations are raised under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, anticipatory bail cannot be granted by this court. But however, it is open to the learned Magistrate to consider the application under Section 437

Cr.P.C on merits, in accordance with law and expeditiously. Sufficient general directions have been issued in the decisions in Ali v. State of Kerala [2000(2) KLT 280, Shanu v. State of Kerala [2000 (3) KLT 452, Krishnakumar v. State of Kerala [20005(1) KLD(Cri.) 42] and P.P.Kader v. State of Kerala [2005(1) KLD(Cri.)250]. I take note of and record the submissions of the learned Public Prosecutor that the prosecution does not now want to raise any allegations against the petitioners under Section 306 I.P.C.

5. This bail application is in these circumstances dismissed. I may, however, hasten to observe that if the petitioners surrender before the learned Magistrate and seek regular bail, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself in the light of the four decisions referred above.

6. I take note of the undertaking of the learned Public Prosecutor that no offence under Section 306 I.P.C would lie. If an application for bail is field by the petitioners before the learned Magistrate, the learned Magistrate must ignore the allegation under Section 306 I.P.C and proceed to pass appropriate orders on merits.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr // True Copy// PA to Judge

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007